

MAR 23 2007

PTO/SB/64 (09-08)

Approved for use through 03/31/2007. OMB 0661-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
10002-701.406

First named inventor: REILEY, Mark A.

Application No.: 10/657.837

Art Unit: 3738

Filed: September 9, 2003

Examiner: ISABELLA, David J.

Title: FACET ARTHROPLASTY DEVICES AND METHODS

Attention: Office of Petitions  
**Mail Stop Petition**  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450  
 FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
 Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**
☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))
**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in  
 the form of a Notice of Appeal (identify type of reply):

☐ has been filed previously on 03/26/2007 AWONDAF1 00000013 504050  
☒ is enclosed herewith. 02 FC:2453 750.00 DA

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

☐ has been paid previously on \_\_\_\_\_  
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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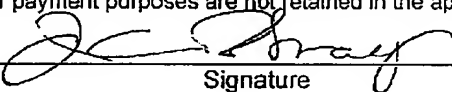
## 3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

  
Signature

3/23/07  
Date

JAMES R. SHAY  
Typed or printed name

32,062  
Registration Number, if applicable

2755 Campus Drive #210  
Address

650-212-1700  
Telephone Number

San Mateo, CA 94403  
Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

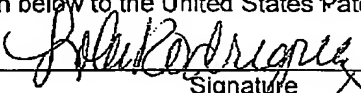
## CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:



☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

3/23/07  
Date

  
Signature  
LOLA RODRIGUEZ

Typed or printed name of person signing certificate

<u>CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8</u>	
I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at Fax No. 571.273.8300 on March 23, 2007.	
 Lola Rodriguez	 March 23, 2007

**RECEIVED**  
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**MAR 23 2007**

**Attorney Docket No. 10002-701.406**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of	)	
	)	
Inventor: REILEY, Mark A.	)	Group Art Unit: 3738
	)	
Application No.: 10/657,837	)	Examiner: ISABELLA, David j.
	)	
Filed: September 9, 2003	)	Customer No.: 66854
	)	
Title: FACET ARTHROPLASTY DEVICES	)	
AND METHODS	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

**REMARKS ACCOMPANYING PETITION UNDER 37 CFR 1.137(b)**

Dear Sir:

Applicant has filed a petition under 37 CFR 1.137(b) for revival of the instant application. The circumstances of this petition are unusual.

The USPTO mailed a Final Office Action on August 23, 2006. The Examiner's analysis in the Final Rejection failed to address all of the pending claims, however. On December 18, 2006, Applicant therefore submitted a Response under 37 CFR 1.116 requesting that the Examiner issue a new and complete Final Rejection and to restart the appeal date clock.

On or about December 19, 2006, the undersigned attorney received a voicemail message from Examiner David Isabella stating that he would be issuing a new Final Rejection in this case that would restart the response date clock. On or about January 22, 2007, PAIR indicated that a new

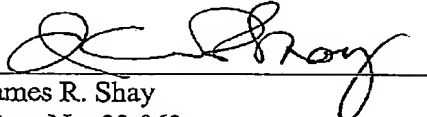
10002-701.406

Final Rejection had been counted but not yet mailed. The status of this case on PAIR has not changed since January 22, 2007. Applicant never received the new Final Rejection.

Since the sixth month date for filing a Notice of Appeal based on the original final rejection expired on February 23, 2007, Applicant is therefore submitting the accompanying Petition to Revive. If the new Final Rejection counted but not mailed on January 22, 2007, is ultimately mailed, thereby restarting the response date clock and obviating the need for the Petition to Revive, Applicant respectfully requests a refund of the petition fee.

Respectfully submitted,

Dated: March 23, 2007

By:   
James R. Shay  
Reg. No. 32,062